IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

WP(C).No. 29358 of 2004(S)

OA.843/2001 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONER:
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1. THE UNITED CO-OPERATIVE FRONT,
REG.NO.T.2557/04, REP. BY THE SECRETARY,
V.KUNHAMBU, ENGINEER SD, V.S.S.C, IS.R.O. P.O.
TRIVANDRUM -22.

2. K.MOHANACHANDRAN PILLAI, SCIENTIST/
ENGINEER (SE) LAUNCH DESIGN VEHICLE GROUP,
VSSC, ISRO (PO), TRIVANDRUM.

BY ADV. SRI.S.JAMES VINCENT
SRI.TERRY V.JAMES

RESPONDENTS:
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1. THE CHAIRMAN, ISRO AND SECRETARY,
DEPARTMENT OF SPACE, BANGALORE-95.

2. THE UNION OF INDIA, REP. BY THE
CABINET SECRETARY, CENTRAL SECRETARIAT,
NEW DELHI.-1.

3. THE SECRETARY, DEPARTMENT OF PERSONNAL
& TRAINING MINISTRY OF PERSONNAL, PUBLIC
GRIEVANCES & PENSION, DO.

BY ADV. SRI.JOHN VARGHESE, Asst. SG

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/01/2007, ALONG WITH WPC NO. 31525 OF 2004 & WPC NO. 29710 OF 2004 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

EXT.P1: PHOTOCOPY OF OFFICE MEMORANDUM NO.2/10(8)/98-1 DT.3.2.99 ISSUED BY THE DEPARTMENT OF SPACE, GOVERNMENT OF INDIA.

EXT.P2: PHOTOCOPY OF OFFICE MEMORANDUM NO.2/10(8)/98-1 DT.12.8.99 ISSUED BY -DO-.

EXT.P3: PHOTOCOPY OF OFFICE MEMORANDUM NO.2/10(8)/98-1 DT.20.12.2000 ISSUED BY -D0-

EXT.P4: PHOTOCOPY OF ORDER NO.PAY/TECH/8039-A DT.28.5.99 ISSUED BY CONTROLLER OF DEFENCE ACCOUNTS (R & D) WITH REFERENCE TO DRDL.

EXT.P5: PHOTOCOPY OF INDIVIDUAL REPRESENTATION SUBMITTED BY THE 2ND PETITIONER TO THE CABINET SECRETARY, GOVERNMENT OF INDIA ON 9.10.99.

EXT.P6: PHOTOCOPY OF THE COLLECTIVE REPRESENTATION SUBMITTED BY THE 1ST PETITIONER ON 20.11.99 TO -DO-.

EXT.P7: PHOTOCOPY OF THE REMINDER SUBMITTED BY THE 1ST PETITIONER ON 20.1.01 TO -DO-.

EXT.P8: PHOTOCOPY OF THE ORDER DT.14.5.03 IN OA.NO.1153/02 OF THE PRINCIPAL BENCH OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, NEW DELHI.

EXT.P9: PHOTOCOPY OF THE PARAWISE COMMENTS FILED ON BEHALF OF THE RESPONDENTS ON 17.7.02 IN -DO-.

EXT.P10:PHOTOCOPY OF THE OFFICE MEMORANDUM DT.11.7.03 ISSUED BY THE DEPARTMENT OF SPACE.

EXT.P11:PHOTOCOPY OF GOVERNMENT OF INDIA RESOLUTION NO.83/1/1/72-CF DT.1.6.1972.

EXT.P12:PHOTOCOPY OF GOVERNMENT OF INDIA (ALLOCATION OF BUSINESS) RULES 1961, CONTAINING RULES 1 TO 13 OF THE DEPARTMENT OF SPACE.

EXT.P13:PHOTOCOPY OF THE COMMON ORDER DT.2.7.04, IN OA.NO.843/02 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

RESPONDENTS' EXHIBITS

EXT.R1: TRUE COPY OF OA.NO.843/01 OF THE CAT, ERNAKULAM DT.2.9.01.

EXT.R2: TRUE COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS IN OA.843/01 DT.29.01.02.

EXT.R3: TRUE COPY OF THE REJOINDER FILED BY THE PETITIONER IN OA.843/01 DT.7.7.02.

EXT.R4: TRUE COPY OF THE ADDITIONAL REPLY STATEMENT FILED BY THE RESPONDENTS IN OA.843/01 DT.24.9.02.

EXT.R5: TRUE COPY OF THE ADDITIONAL REJOINDER FILED BY THE PETITIONER IN OA.NO.843/01 DT.6.7.03.

EXT.R6: TRUE COPY OF THE SECOND ADDITIONAL REPLY STATEMENT FILED BY THE RESPONDENTS IN OA.NO.843/01 DT.4.7.03.

EXT.R7: TRUE COPY OF THE O.M.NO.F.NO.A-60044/1/01-Ad.1 DT.22.2.02.

/TRUE COPY/

P.A TO JUDGE

K.A. ABDUL GAFOOR & K.R. UDAYABHANU, JJ

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W.P. (C). Nos. 29358, 29710 & 31525 OF 2004

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Dated this the 18th day of January 2007

JUDGMENT

Abdul Gafoor,J

The writ petitioners contended before the Central Administrative Tribunal that the additional increments, that they are entitled in terms of paragraph 2 of Ext.P1 office memorandum issued with the sanction of the President, should be treated as pay for all purposes including D.A., HRA, pension etc. They relied on the definition of pay, as contained in FR 9 (21)(a)(1). They also contended that the professional update allowance in terms of paragraph 3 of Ext.P1 should have been granted from 1998-1999 payable on 1st April 1999 rather than being postponed to the next year as ordered in the Ext.P2. Ext.P2 is thus in violation of Ext.P1 order issued with sanction of the President. On the other hand Ext.P2 is not an order issued with the sanction of the President. It is submitted that these aspects were not duly adverted to in the order of Tribunal

impugned in these writ petitions. Therefore, those impugned orders are liable to be set aside, the petitioners submit.

2. It is submitted by the counsel for the respondents that the Exts.P2 and P3 are the clarifications issued by the Government of India for the implementation of the orders contained in Ext.P1. The government has got the power to issue such clarifications even to restrict its application. None of the benefits granted as per Ext.P1 is taken away. There was only a restriction that the amount payable under paragraph 3 of Ext.P1 was postponed to the next year, taking into account the financial burden. Therefore, there is no reason for interference with the impugned orders passed by the Tribunal.

3. Paragraph 2 of Ext.P1 reads as follows:

Additional increments for Scientists/Engineers in the scale of pay of
Rs. 10000-15200; 12000-16500; 14300-18300 & 16400-20000:

Grant of two additional increments to all the Scientists/Engineers, both recruitees and promotees, in the scales of pay of Rs. 10000-325-15200; 12000-375-16500; 14300-400-18300 & 16400-450-20000 w.e.f 01.01.1996 after their normal fixation.

4. The writ petitioners belong to engineers grade SD-SG. Admittedly they are covered by paragraph 2 of Ext.P1, extracted above. Ext.P1 is an order issued by the Government of India with the sanction of the President in exercise of powers under Article 77 of the Constitution of India. It does not restrict payment of dearness allowance in any way. Nor does it say that dearness allowance will not be paid against the additional increments so granted to the engineers in grade SD, SE, SF and SG, like the writ petitioners. It also does not say that additional increments so granted will not be considered as pay.

5. It is an admitted position before us that dearness allowance, house rent allowance and even pension on retirement of the incumbents concerned shall have to be reckoned on the basis of pay drawn by them. Pay is defined in FR 9(21)(a) as under:

> Pay means the amount drawn monthly by a Government servant as-
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> (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and

(ii) overseas pay, special pay and personal pay; and

(iii) any other emoluments which may be specially classed as pay by the President.

If the additional increments granted as per Ext.P1 comes within the pay; necessarily all attributes and additions to the pay shall be granted even counting the said additional increments. Therefore, our exercise is to find out whether additional increments so granted comes within the definition of pay.

6. Going by the definition extracted above, pay is the monthly amount drawn by a government servant as pay which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled by reason of position in the cadre. The special pay or pay granted in lieu of his personal qualification is excluded from its purview.

7. The engineers working in grade SD, SE,SF, SG etc. may have the required minimum qualification or might have acquired higher qualification. The additional increments granted to them as per paragraph 2 of Ext.P1 are not for the qualification that they possess but "to attract, retain, inspire and motivate the scientists/engineers to give their best contributions." as

discernible from that order. Paragraph 1 of Ext.P1 specifically deals with special pay. Necessarily, the additional increments so granted will not come within the excepted payments like special pay or pay granted in lieu of his personal qualifications. It is on the other hand a payment sanctioned for the post held by the the writ petitioners substantively and it is a payment to which they are entitled by reason of their position in the cadre as engineers in the grades SD, SE, SF, or SG. Thus, the additional increments granted as per Ext.P1 fall within the definition of pay. Necessarily, all attributes that may be added to emoluments reckoning pay shall have to be paid to them, whether it be DA, HRA. Equally so is the pension pension to the retired employees, because pension is also reckoned based on the pay drawn. The view taken by the Tribunal, in that regard, is therefore not justified.

8. The further issue involved is from which date the professional/update allowance sanctioned in Ext.P1 shall be payable The President has sanctioned, as per Ext.P1, payment of the said allowance from 1998-1999 onwards. The modus

operandi of payment is for the concerned department to work out. While working out it has been ordered in Ext.P3 that it would be paid from the year 1999-2000 onwards payable on 1st April, 2000. Necessarily, this is a modification issued by the department to Ext.P1, presidential order which sanctioned the said allowance specifically from 1998-1999, which was payable from 01.04.1999 onwards. Ext.P3 to the extent it curtails the payment of said allowance is also wrong. Presidential order cannot be varied without the specific sanction of the President. This aspect has not been properly conceived and considered by the Tribunal below.

9. More over financial burden is also not a ground to be heard from the respondent. It cannot be expected, when President sanctions a payment in consultation with Cabinet financial aspects would not be taken into account.

10. Consequently, the orders of the Tribunal impugned in this batch of writ petitions are quashed making it clear that the additional increments sanctioned in terms of paragraph 2 of Ext.P1 shall be counted as pay to attract all further payments

including pension depending on pay of an incumbent and that the professional update allowance payable in terms of paragraph 3 of Ext.P1 shall be payable from 1998-1999, falling due on 01.04.1999 onwards.

The writ petitions are disposed of accordingly.

K.A. ABDUL GAFOOR, JUDGE

K.R. UDAYABHANU, JUDGE.

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